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Andre M. Gibbs
Blakely Sokoloff Taylor & Zafman
12400 Wilshire Boulevard
Seventh Floor
Los Angeles, CA 90025

MAILED
JAN 11 2005
OFFICE OF THE DIRECTOR
TC 3600

In re Application of
Eithan Y. Ephrati, et al.
Application No. 09/426,410
Filed: October 25, 1999
For: ELECTRONIC MULTILATERAL
NEGOTIATION SYSTEM

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: **DECISION ON PETITION
TO WITHDRAW THE
HOLDING OF ABANDONMENT**

This is a decision on applicants' Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181 filed in the United States Patent and Trademark Office on October 27, 2004.

The petition is **DISMISSED**.

A review of the file record reveals that a Notice of Non-Compliant Amendment was mailed to applicants on February 4, 2004, setting a one-month shortened statutory period for response. Since a response was not received before the expiration of the six-month statutory period for reply, the application became abandoned at midnight on August 4, 2004, and a Notice to that effect was mailed on September 21, 2004.

Petitioner contends that the February 4, 2004 Notice of Non-Compliant Amendment was not received. In support thereof, petitioner submits, *inter alia*, a declaration of Lester J. Vincent, and a copy of the "the BSTZ docket records for the present application".

There is a strong presumption that an Office communication properly addressed and delivered to the United States Postal Services, was in fact delivered to the addressee. An allegation that the Office communication was not received must be overcome by a showing that it was not received.

The showing required to establish non-receipt of an Office communication must include all of the following requirements:

- (1) A statement from the practitioner stating the Office communication was not received by the practitioner;

- (2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and
- (3) A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The docket records indicated above must include a copy of the list of all responses in the practitioner's office with the due date of March 4, 2004. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 OG 53 (November 16, 1993). The petitioner has failed to comply with requirement (3) indicated above.

The docket record submitted by petitioner is that of the above referenced application. To satisfy requirement (3) above, a docket record showing all responses due by the firm of Blakely, Sokoloff, Taylor & Zafman, at and around the due date of March 4, 2004, must be supplied.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181."

Correspondence with respect to a Petition to Withdraw the Holding of Abandonment under *Delgar Inc. v. Schuyler* should be mailed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



Kenneth J. Dorner
Special Programs Examiner
Technology Center 3600
(703) 308-0866

KJD/rwg: 1/06/05